

**VILLAGE OF WESTMONT  
PLANNING & ZONING COMMISSION  
AGENDA ITEM P/Z 05-084**

**MEETING DATE: November 9, 2005**

**TITLE: Village of Westmont regarding a Zoning Code Text Amendment to the definition of “Family” found in Article XIV of the Westmont Zoning Code.**

**BACKGROUND OF ITEM**

The Village’s current definition of family is “An individual or two or more persons related by blood, marriage or adoption and/or not more than two unrelated persons maintaining a common household in a single dwelling unit.” Unfortunately, this definition of family as it currently exists is arguably unconstitutional and violates the Fair Housing Act. The FHA ensures equal opportunity in housing to handicapped persons by prohibiting discrimination against them “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services of facilities in connection with such dwelling, because of a handicap of that person.” 42 U.S.C. 3604(f)(2)(A). Thus, our definition of family would illegally prohibit more than two disabled persons who are unrelated by blood or marriage from living together in a single dwelling unit.

To my knowledge, this definition of family has not been raised as an issue or objected to in the past in any manner. However, it has recently become an issue because of the townhouse located at 204 Carlisle Court, Westmont, Illinois. There, a disabled individual occupied the property with his mother, until his mother passed away in 2003. The trustee of this disabled person was appointed, and now additional disabled persons have moved in to this townhouse. The townhouse is a two-bedroom townhouse, with a loft which has been converted into a third bedroom. The trustee seeks permission to allow four disabled persons to occupy this townhouse, plus allow for a 24-hour supervisor or care giver to occupy the townhouse as well. They have sought an accommodation from our definition of family based on their disability, and the Village of Westmont has decided to process this text amendment to address this issue on a Village-wide basis.

The Village has received a memo dated October 19, 2005 from Ellen Emery, a resident at Carlisle Court, and an attorney with Ancel, Glink, Diamond, Bush, DiCianni & Rolek, P.C. This memo provides a thorough summary of the applicable law in this area of fair housing, states the concerns of the residents of Carlisle Court regarding this housing situation and states their proposed solution for a zoning text amendment which would limit occupancy in the R-4 single-family residential district to three occupants.

The FHA and case law interpreting it does state that while a municipality cannot discriminate against disabled persons in the provision or regulation of housing, it may require such housing of disabled persons to conform with reasonable zoning regulations and occupancy

limits. Regardless of any text amendment passed, any residents must comply with our Zoning Code, Building Code regulations, including occupancy restrictions. Our Code currently restricts room sizes as follows: “The living or principle room shall not be less than 150 square feet; the first bedroom shall not be less than 100 square feet; and each other bedroom, if any, shall not be less than 80 square feet in area.” Our Code also provides the following occupancy limit: Every dwelling shall contain at least 150 square feet of floor space for the first occupant thereof and at least 50 additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area. Single-family owner occupy dwellings which are found to generally meet the occupant’s needs may be exempted from the dwelling space requirements.” (There may be other occupancy limits established by national or international building codes adopted by the Village.)

I have also examined the Zoning Codes of other surrounding communities to see how they have addressed this situation. Copies of these other codes are attached. I have not included codes from other communities which I believe were not updated and therefore unconstitutional. Most of these codes include a somewhat broader definition of family, and also allow for one or more forms of group homes or family community residences as either permitted or special uses in all residential zoning districts.

Based on this research, it is my recommendation that we amend our definition of family. I also believe that we should separately define and allow as a permitted use a “family community residence.” I also believe we should amend our Zoning Code to define and allow as a special use a “group community residence.” The proposed text amendments in this regard are also attached hereto for your review.